

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council
Date of Meeting:	May 17, 2005
Time of Meeting:	6:00 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the regular meeting of the Milpitas City Council at 6:00 p.m. Present were Mayor Esteves, Vice Mayor Gomez and Councilmember Polanski

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following items listed on the agenda:

1.Conference with Legal Counsel – Existing Litigation

(Pursuant to Government Code Section 54956.9(a))

City of Milpitas vs. Turner Construction et al. Santa Clara County Superior Court Case No. 103CV814946 consolidated with 103CV008400

2. Conference with Negotiator – Collective Bargaining

(Pursuant to Government Code 54957.6)

City Negotiator: Art Hartinger

Organization Represented: Milpitas Police Officers Association

Anticipated Issues Under Negotiation: Wages, Hours, Working Conditions and Benefits

Mayor Esteves adjourned the meeting to the Closed Session at 6:01 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Polanski and Giordano present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of May 3, 2005.

M/S: Giordano/Polanski

Ayes: 4 Livengood Absent

SCHEDULE OF MEETINGS

MOTION: To approve the Schedule of Meetings.

M/S: Giordano/Polanski

Ayes: 4 Livengood Absent

PRESENTATIONS

Proclamations:

Mayor Esteves stated Memorial Day has been designated as a special day to give public recognition and gratitude to all fallen heroes and Proclaimed Monday, May 30 as Memorial Day in the City of Milpitas with a 9:00 a.m. ceremony at Veterans Memorial Park in Civic Center Plaza. He presented the proclamation Andy Andres.

Mayor Esteves stated the Milpitas Veterans Club was formed in 1948 by local World War II veterans and was active until December 2004 when it disbanded. He stated the City wishes to honor their members by installing a memorial bench and plaque at the Veterans Memorial Park at the Civic Center. He recognized the following members:

Ed Bates
Joe Bettencourt
Vince Butero

Ray Madruga
Joseph Moretti
Louis R. Pimentel

Thomas E. Cardoza
Jonnie Castillo
Frank Garcia
Gonzalo “Jake” Guerrero
Andrew Henriques
Lawrence Heniques
Leland F. Lopes

John Pyle
Alexander Rose
Manuel Rose
Kenneth Silva
Joe Smith
Bob Ware
Lester A. Werner

Ed Bates and Louis Pimentel accepted.

Commendations

Mayor Esteves presented commendations to the surviving members of the Milpitas Veterans Club and presented them to Ed Bates and Louis Pimentel. A video was shown of John Pyle and Louis Pimentel receiving their commendations at home.

Mayor Esteves presented a commendation to Lawrence Henriques posthumously, the founding member of the Milpitas Veterans Club.

Mayor Estevez presented certificates to the widows Mrs. Jonnie Castillo(Helen) and Mrs. Frank Gonzalo (Delores). He stated certificates will be mailed to the widows of past Milpitas Veterans Club members: Ms. Joseph Bettencourt (Adeline), Mrs Gonzalo “Jake” Guerrero (Josephine), Mrs. Leland F. Lopes (Connie), Mrs. Ray Madruga (Marie), and Mrs. Joe Smith (Doris).

Certificate of Reappointment

Mayor Esteves presented Barbara Ebright a Certificate of Reappointment to the Senior Advisory Commission for a term to expire December 2006.

Certificates of Appreciation

Mayor Esteves presented a Certificate of Appreciation to Officer David Morris for his exemplary crime fighting efforts in winning the 2004 “Crime Stoppers” Award.

Mayor Esteves recognized the following business for April Joint City/School District and Mass Feeding Exercise at Joseph Weller Elementary.

Albertson’s, 25 N. Milpitas Blvd.
Burger King, 175 W. Calaveras Blvd.
Burger King, 1475 Dempsey Road
Marie Calendars, 333 S. Abbott Avenue
Carl’s Jr., 120 W. Calaveras Blvd.
Chili’s, 300 W. Calaveras Blvd.
Fresh Choice, 248 Great Mall Drive
Georgio’s, 634 E. Calaveras Blvd.
In-N-Out Burger, 50 Ranch Road
Kentucky Fried Chicken, 73 S. Main Street
Lee’s Sandwiches, 279 W. Calaveras Blvd.
LSI Logic, 1621 Barber Lane

Lyon’s, 765 E. Calaveras Blvd.
McDonalds, 1249 Great Mall Drive
McDonalds, 99 N. Milpitas Blvd.
McDonalds, 1584 N. Milpitas Blvd.
Nob Hill Foods, 401 Jacklin Road
Omega Restaurant, 90 S. Park Victoria
Taco Bell, 1774 s. Main Street
Taco Bell, 1365 S. Park Victoria Drive
Taco Bell, 81 Ranch Drive
Togo’s, 3076 Landess Avenue
Town Center Pizza, 85 N. Milpitas Bvd.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Diane Davis, a member of the Milpitas Library Advisory Commission, announced her resignation from the Commission citing differences in her values and the Councils’.

Marilyn Hay, Chair of the Library Advisory Commission, spoke about the contributions of Diane Davis and expressed concerns about the Council's support for the Library.

The Council expressed their appreciation for the contributions made by Diane Davis and acknowledged the loss to Milpitas. They further expressed their support for the library and the importance to the community and the work currently underway to build a new library. Vice Mayor Gomez stated he voted against the Library tax ballot and wants to work with the JPA to open the Library on Mondays. Councilmember Giordano stated for the record that she did vote to put the tax measure on the Ballot and also acknowledged the need for fiscal responsibility.

Katheryn Manento, a member of the public, spoke in opposition of mixing religion and politics and having invocations at the start of Council meetings.

Andy Andes, Executive Chairperson of the Filipino American Association of Milpitas, invited the Council and the public to a Filipino Multi Cultural Fiesta on Saturday, June 4, 2005 from 2:00 p.m. to 7:00 p.m. at the Milpitas Community Center, and to a 21 gun salute on Memorial Day by the American Legion American Guard at 9:00 a.m. at Milpitas Veterans Memorial Park.

Dr. (name illegible), a member of the public stated he wanted to move his practice to Milpitas. He stated that in order to reach his business, you must make a U-turn on Big Basin on to Victoria Parkway which has created problems for customers reaching his business. He requested Council's assistance in creating a new entrance to the shopping center.

A Gentlemen (name illegible), a member of the public, stated that if a solution is found to the U-turn problem, he would be willing to move his business as well to Milpitas.

A Lady (name illegible), a member of the public, spoke in support of a solution to the U-turn problem.

A Lady (name illegible), a member of the public, spoke in support of a solution to the U-turn problem and expressed her frustration with the current situation.

Joanne, a member of the public, spoke about her difficulties in reaching the businesses and advocated for a solution.

Mayor Esteves requested staff look into the problem and find a solution.

ANNOUNCEMENTS

Mayor Esteves announced the Budget will be adopted on June 7 and invited the public to attend. He further asked the City employees for support of the City's bleak financial condition.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Pio Roda inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. Councilmember Giordano inquired about item 5 and if she was in conflict.

APPROVAL OF AGENDA

City Manager Lawson requested the item no. 3 be moved to after item no. 13 to allow time for Dr. Shanks to arrive. City Attorney Pio Roda noted a correction on item 5 stated the word "define" should be changed to "consider possible disclosure of". Vice Mayor Gomez requested item no. 4 be moved to the Consent Calendar.

MOTION to approve the agenda as amended.

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

City Manager Lawson requested item no. 19 be removed from the Consent Calendar.

MOTION to approve the Consent Calendar as amended.

M/S: Gomez/Giordano

4 Livengood Absent

- *9.
Commissions Dinner** Approve payment to the Embassy Suites in the amount of \$7407.03 from account 100-100-4201 with the remaining balance of \$4993.82 to be appropriated from 100-100-4201 into the Recreation Assistance Program (RAP) Holding Account, HA 1396-2500 and authorize use of the appropriated money in Holding Account 1396-2500.
- *10.
Status of Creek Trail Permits** Note Receipt and File Report: Status of Creek Trail Permits from Santa Clara Valley Water District (SCVWD) for Berryessa and Coyote Creek Trails (Project # 5074 and #4206).
- *11.
Status of Heritage Tree Program** Note, receipt and file Status of Heritage Tree Program and Tree Planting Program.
- *12.
Adopt Ordinance No. 54.24 for Appeals of Animal Regulation** Adopt Ordinance No. 54.24 Amending Section 5.05 of Chapter 20 of Title I and Section 13.08 of Chapter 210 of Title V of the Milpitas Municipal Code to provide that Notices of Appeal to the City Council Shall only be Effective Upon Timely Receipt of Payment of the Fee Adopted or Amended by Resolution of the City Council and to Provide for Appeals of the Animal Regulation Administrator's Decisions to be Heard by the City Council.
- *14.
Adopt Resolution of Annual Engineer's Report: McCarthy Ranch** Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 95-1, McCarthy Ranch, Program No. 9474.
- *15.
Adopt Resolution for Annual Engineer's Report: Sinclair Horizon Program** Adopt Resolution Directing Preparation of the Annual Engineer's Report: Landscaping and Lighting Maintenance Assessment District No. 98-1, Sinclair Horizon, Program No. 9489.
- *16.
Adopt Resolution Main Sewage Pump Station** Adopt Resolution Granting Initial Acceptance: Main Sewage Pump Station Demolition and Site Improvements.
- *17.
Adopt Resolution Singly Area Street Rehabilitation** Adopt resolution granting initial acceptance of the project subject to the one-year warranty period, and reduction of the faithful performance bond to \$108,537.98.
- *18.
Approve Agreement for Commercial Recycling Outreach** Approve agreement for consulting services with Pat Davis Design Group in an amount not to exceed \$25,350, subject to approval as to form by the City.
- *19.
Approve Agreement Guttman & Blaevot** Removed from Agenda
- *20.
Approve Agreement with Pyro Spectaculars** Authorize the City Manager to execute the contract with Pyro Spectaculars, subject to approval as to form by the City Attorney, in an amount not to exceed \$19,500.00.

- *21.
Award Bid for Exercise Equipment** Award the bid for the purchase of the five (5) pieces of commercial exercise equipment to Life Fitness, in the amount of \$17,257.52.
- *22.
Approve Maintenance Agreement with Tiburon, Inc.** Authorize the City Manager to extend the current software support agreement between Tiburon, Inc. and the City of Milpitas in an amount not to exceed \$39,000.
- *23.
Approve Fourth Amendment to Nutrition Contract** Approve the fourth amendment to the contract between the County of Santa Clara (Social Services) and the City of Milpitas effective July 1, 2005, through June 30, 2006.
Authorize payment to the County of Santa Clara for the amount of the contract, \$132,042.
- *24.
Approve First Amendment to Contract with New Orient Restaurant** Approve the first Amendment to the contract between the City of Milpitas and New Orient Restaurant from July 1, 2005, through June 30, 2006, for the Senior Nutrition Program. Authorize payment to New Orient Restaurant for the total amount of this contract, \$25,988, not to exceed \$3.50 per meal. Sufficient funds have been budgeted in Recreation Services operating budget for FY 05/06, upon City Council's adoption of the FY 05/06 budget.
- *25.
2005 Slurry Seal Project** Approve Plans and Specifications and Authorize Advertisement for Bid Proposals: 2005 Slurry Seal Project
- *26.
Execute Agreement with Central Pacific Engineering** Authorize the City Manager to execute the agreement amendment with Central Pacific Engineering, Inc., in the amount of \$25,150, subject to approval as to form by the City Attorney.
- *27.
Berryessa Pump Station** Approve Plans and Specifications and Authorize the Advertisement for Bids: Berryessa Pump Station, Project No. 8138.
- *28.
Senior Center Re-Roofing** Approve Specifications and Authorize Advertisement for Bid Proposals: Interim Senior Center Re-roofing, Project No. 8134.
- *29.
Debris Box Agreements** Authorize the City Manager to execute debris box agreements with All Trash Company, subject to approval as to form by the City Attorney.
- *30. Agreement Amendment URS Corporation Americas** Authorize the City Manager to execute the agreement amendment with URS Corporation Americas (URS) for project management fees not to exceed \$230,000, subject to approval as to form by the City Attorney.
- *31.
Approve Payment Requests** Approve Payment Requests: Miscellaneous Vendors/Contractors.
- *32.
Release of Surplus Fire Equipment** Authorize the Purchasing Agent to release title and custody of surplus historical fire equipment (PT #163) to the Milpitas Historical Society, for the preservation of such equipment for posterity.

PUBLIC HEARINGS

- 1.
Aerial Station and Future Line Segment Alternative** Tambri Heyden, Interim Planning and Neighborhood Preservation Director, presented the staff report. She reported the VTA has withdrawn their request for an Aerial Station and Future Line Segment
- Vice Mayor Gomez inquired why the request was withdrawn.

MOTION: Close the Public Hearing.

M/S: Gomez/Polanski

Ayes: 4 Livengood Absent

MOTION: Note receipt, and file.

M/S: Polanski/Gomez

Ayes: 4 Livengood Absent

**2.
Formation of Community
Facilities District**

Emma Karlen, Finance Director, presented the staff report. She gave a brief history and reviewed the service provided by the Community Facilities District. She stated on April 4, 2005, the City Council adopted a resolution declaring its intention to establish a Community Facilities District to authorize the Levy of Special Taxes pursuant to the Mello-Roos Community Facilities Act of 1982:

She introduced Andrea Roess, from David Taussig and Associates, who presented a Power Point Presentation that covered public financing, the Community Facilities District, flexible apportionment of special taxes, public services financed by the Community Facilities District, DCF characteristics, Milpitas CFD Code 2005-1, park maintenance costs, landscape maintenance, and annual maximum special tax of \$310.61.

Vice Mayor Gomez inquired if this would be a separate fund or would the funds go into the General Fund, and the formation of homeowners groups. He further inquired about the amount of funds the City would be receiving and how the number of acres was determined.

Councilmember Giordano inquired if this was the first time this has been done in Milpitas, and if the benefits/taxes can be changed at a future date by a vote or petition, and the impact on affordable housing.

Mayor Esteves verified that the Council is the legislative body and where funds can be spent.

Mayor Esteves inquired if anyone desired to file a written protest. There were none.

Mayor Esteves opened the public hearing. There were no comments.

MOTION: Close the public hearing

M/S: Giordano/Gomez

Ayes: 4 Livengood Absent

MOTION: Adopt A Resolution of Formation of City of Milpitas Community Facilities District No. 2005-1 (Public Services), Authorizing the Levy of a Special Tax within the District, Preliminarily Establishing an Appropriations Limit for the District and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors of the District.

M/S: Esteves/Gomez

Ayes: 4 Livengood Absent

MOTION: Adopt A Resolution entitled: A Resolution of the City Council of the City of Milpitas of Formation of City of Milpitas Community Facilities District No. 2005-1 (Public Services), authorizing the levy of a Special Tax within the District, preliminarily establishing an appropriations limit for the district and submitting levy of special tax and the establishment of the appropriations limit to qualified electors of the District.

MOTION: Adopt A Resolution of the City Council of the City of Milpitas Declaring Results of Special Election and Directing Within Community Facilities District No. 2005-1 (public services).

M/S: Esteves/Gomez

Ayes: 4 Livengood Absent

The Deputy City Clerk opened the sealed ballot and reported a vote of 21 ayes and 0 noes.

MOTION: Adopt a Resolution entitled: A resolution of the City Council of the City of Milpitas declaring results of special election and directing recording of notice of special tax lien.

M/S: Gomez/Giordano

Ayes: 4 M/S: 4 Livengood Absent

MOTION: Waive reading beyond title.

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

MOTION: Introduce Ordinance No. 268

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:30 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano and Polanski

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of May 3, 2005, including joint meetings with the City Council, as submitted.

M/S: Polanski/Giordano

Ayes: 4 Livengood Absent

**RA4.
AGENDA**

MOTION to approve the Agenda as submitted

M/S Polanski/Giordano

Ayes: 4 Livengood Absent

**RA5.
BILLINGS PROPERTY**

Richard Pio Roda, Assistant City Attorney, presented the staff report. He stated Billings currently desires to sell the property and the transaction is in escrow. As a part of escrow, the buyer has discovered the various encumbrances on the property resulting from the DDA and the original grant deed. The property owner has requested that the Agency remove the deed restriction in the Grant Deed, remove the DDA from title record, and also rescind the ordinance implementing the sales tax sharing arrangement. To fulfill Billings request, the Agency can re-convey its interest in the deed restriction, and request that the DDA be removed from record. If the Council wishes to do so, it can direct staff to effect the reconveyance. As a condition of the reconveyance, staff would collect on the overpayment of the promissory note, and would additionally require that the attorney for Billings prepare drafts of all instruments necessary to effect the requested actions, to be reviewed by the City Attorney.

MOTION: Authorize the City Manager to execute the documents necessary to effect reconveyance of the Agency's interest in the deed restriction and remove the DDA from record; and introduce Ordinance No. 269 repealing Ordinance 192.6 in its entirety and waive reading beyond the title.

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

**RA6.
ADJOURNMENT**

There being no further Redevelopment Agency Business, Mayor Esteves adjourned the Redevelopment Agency meeting at 8:42 p.m.

REPORTS OF OFFICERS AND BOARDS

City Council

4. Funding Request

Moved to Consent.

Approve \$1000 funding for Global Leaders Youth Conference.

5. Conflict of Interest Regarding Sign Code Ordinance

Richard Pio Roda, Assistant City Attorney, presented the staff report. He reported on April 19, 2005, the City Attorney's Office issued a confidential attorney-client privileged memo to the Council responding to Councilmember Giordano's request for advice regarding possible conflicts of interest she and the Mayor may have when voting on the proposed sign code ordinance, considering Councilmember Giordano's employment as a real estate agent and Mayor Esteves holding a real estate agent license. The Open Government Ordinance prohibits the Council from asserting the attorney-client privilege on advice from the City Attorney's Office to the Council related to the Open Government Ordinance, the Brown Act, the California Public Records Act and the California Political Reform Act. Future advice and memos on such matters will not be attorney-client privileged.

MOTION: Waive the attorney-client privilege for the memo dated April 15, 2005 and issued to the Council April 19, 2005, Subject: Conflict of Interest - Real Estate Agents and Sign Code Ordinance.

Councilmember Polanski inquired if a copy of this would be sent to the Milpitas Post.

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

6. Reappointments to Commissions

Mayor Esteves, presented the report. He reported he is recommending the following appointments and reappointments to City commissions:

Vice Mayor Gomez inquired about the appointment of Mr. Valore for the Economic Development Commission.

Arts Commission

Appoint Alternate Harriet McGuire to the existing vacancy with a term expiring October 2006.

Appoint Juniel Butler from Alternate No. 2 to Alternate No.1 with a term expiring October 2006.

Appoint Archana Aragon to the Alternate No. 2 position with a term expiring October 2005.

Bicycle Transportation Advisory Commission

Appoint Miljon Buquing to the existing vacancy with a term expiring August 2007.

Appoint Kayci Nguyen from Alternate No. 2 to Alternate No. 1 with a term expiring August 2006.

Appoint Eugene Simmons to the Alternate No. 2 position with a term expiring August 2005.

Citizens' Emergency Preparedness Advisory Commission

Reappoint Russ Cherry and Brian Shreve to terms expiring June 2008.

Appoint Alternate Michael Berryhill to an existing vacancy with a term expiring June 2006.

Appoint John Pilger from Alternate No. 2 to Alternate No. 1 with a term expiring June 2007.

Appoint Nancy Gampon to the Alternate No. 2 position with a term expiring June 2005.

Community Advisory Commission

Appoint Alternate Jennifer Lind to an existing vacancy with a term expiring January 2008.
Appoint Danny Fang from Alternate No. 2 to Alternate No. 1 with a term expiring January 2007.

Appoint Michael Queenan from Alternate No. 3 to Alternate No. 2 with a term expiring January 2007.

Appoint Nelson Villegas to the Alternate No. 3 position with a term expiring January 2007.

Appoint Reena Choudhury to the Alternate No. 4 position with a term expiring January 2006.

Economic Development Commission

Reappoint Dhaval Brahmbhatt and Vince Songcayawon, terms expiring April 2008.

Appoint Alternate Tomo Nguyen to an existing vacancy with a term expiring April 2007.

Appoint Alternate Charlene Tsao to an existing vacancy with a term expiring April 2007.

Appoint Pat Songsiri to the Alternate No. 1 position with a term expiring April 2007.

Appoint Minh Nguyen to the Alternate No. 2 position with a term expiring April 2006.

Library Advisory Commission

Reappoint Sonny Wang, Sen Fan and Carmen Montano, terms expiring June 2008.

Mobile Home Park Rental Review Board

Reappoint Milan Dobro to a term expiring June 2008.

Appoint Florence Romito to an existing vacancy with a term expiring June 2007.

Parks, Recreation and Cultural Resources Commission

Reappoint Bob McGuire to a term expiring June 2008.

Appoint Alternate Kathryn Gray to an existing vacancy with a term expiring June 2008.

Appoint Alternate Raymond Serena to an existing vacancy with a term expiring June 2007.

Appoint Dave Sandhu to the Alternate No. 1 position with a term expiring June 2006.

Appoint Robert Burrill to the Alternate No. 2 position with a term expiring June 2007.

Recycling & Source Reduction Advisory Commission

Appoint Alternate Patrick Yung to an existing vacancy with a term expiring October 2007.

Appoint Eulalio Mercado from Alternate No. 2 to Alternate No. 1 with a term expiring October 2007

Senior Advisory Commission

Reappoint Bal Daquigan and Amanda Santos, terms expiring December 2007.

Telecommunications Commission

Reappoint Albert Alcorn, William Lam, Paul Peterson and Gunawan Alisantosa to new two-year terms expiring January 2007.

Appoint Alternate Aaron Ettinger to an existing vacancy with a term expiring January 2007.

Appoint Satish Kuman Bansal to the Alternate No. 1 position with a term expiring January 2007.

Appoint Syed Afar Ali Bilgrami to the Alternate No. 2 position with a term expiring January 2006.

Youth Advisory Commission

Appoint Liberty Hilario to the Alternate No. 2 position with a term expiring September 2005.

Appoint Lorden Fok to the Alternate No. 3 position with a term expiring September 2005.

Appoint Roxane Lachance to the Alternate No. 4 position with a term expiring September 2005.

MOTION: Approve the Mayor's appointments and reappointments to Commissions.

M/S: Polanski/Gomez

Ayes: 4 Livengood Absent

NEW BUSINESS

7. Report on Terrace Gardens

Felix Reliford, Housing and Neighborhood Preservation Manager, presented the staff report. He reported at its meeting on March 24, 2005, the Terrace Gardens Board of Directors conducted its interviewing process for the appointment of six (6) new board of director members. A total of ten (10) candidates applied and were interviewed by the existing board to serve on the Board of Directors. At the time of the interviewing process, the Board of Directors consisted of three (3) existing members: 1) Councilmember Debbie Giordano, 2) Interim City Manager, Charles Lawson, and 3) Jim Connolly. The process used to inform the public in regards to the opportunity to apply for Terrace Gardens Board of Directors consisted of the following: 1) A Milpitas Post article on the status of the previous Terrace Gardens Board of Directors, 2) Staff was asked to contact previous Terrace Garden Board of Directors within the past 5 years to see if they had any desire to be interviewed, 3) Staff was asked to contact the previous Terrace Gardens Board of Directors to determine if they had any interest in reapplying.

Councilmember Polanski stated she request this item be agendized for discussion. She stated she was surprised that letters went out and within 10 days the appointments were made. She expressed concern about the use of staff time for Terrace Gardens. She stated for the record that she did not vote to do away with the entire board and expressed dismay that qualified people did not have the opportunity to be appointed.

Councilmember Giordano stated there is a new effective board that is now meeting twice a month and is in compliance with the Brown Act. She stated the tenants are happy with the new board.

Vice Mayor Gomez stated he was not opposed to staff assisting with Terrace Gardens.

Councilmember Polanski noted the old board operated within the Brown Act.

Mayor Esteves inquired about the open and closed door selection of the board members with Councilmember Giordano responding that was done to make certain they were not in violation of the Brown Act. He further inquired about the meal program.

MOTION: Noted receipt and filed

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent

8. Update on on-Line Permitting

Bill Marion, Director of Information Systems, presented the staff report. He gave a history of the permitting systems in the City, a review of other Cities in the County and stated currently the City of Milpitas provides the following information on permitting through the Internet: Building Code references, application forms, application instructions, permit requirements, permit fees, on-line submittal status, on-line plan check status, on-line inspection results. He stated the three options to implement are: 1) incorporate on-line permitting with the current permitting system, 2) use a third party service to issue on-line permits, 3) replace the existing permitting system with a new application that includes on-line permitting. He stated staff recommends continuing the research so that a more thorough evaluation can be made and a formal recommendation made to Council.

Councilmember Giordano inquired if the Community Services applications are available

on line.

Mayor Esteves expressed his dismay that Milpitas does not have an on-line permitting process for even simple requests. He advocated for progress on the on-line permitting.

Vice Mayor Gomez advocated for a cost/benefit analysis before implementing a new system to make certain the system is cost effective.

MOTION: Come back to Council in 3 months with a specific plan for implementation and a cost/benefit analysis.

M/S: Esteves/Gomez

Ayes: 4 Livengood Absent

ORDINANCES

13. Moratorium on Medical Marijuana Dispensaries

Steve Mattas, City Attorney, presented the staff report. He reported recently the Planning staff has received several written and verbal inquiries regarding the land use application process for medical marijuana dispensaries. The operation and location of medical marijuana dispensaries is a complicated issue. State and federal law are not in agreement on whether such facilities are legal, the state's laws on the issue are not clear, and community sentiment regarding such facilities and the purpose of their existence is mixed. Furthermore, the existence and operation of dispensaries is a relatively new concept and the full scope of the potential impacts of dispensaries is not known to dispensaries.

It is clear that allowing medical marijuana dispensaries within the City poses a risk to the public safety, health, and welfare. Planning staff, working in cooperation with the Interim City Manager and the City Attorney's office, is working to draft an amendment to the zoning ordinance to permit such dispensaries as conditional uses in three zoning districts (HS, M1 & M2) and to provide similar regulations as adult businesses. As an interim measure, however, the Council may wish to consider the adoption of a temporary moratorium on these uses until such time as the City can adopt a comprehensive regulatory framework.

Pursuant to Government Code Section 65858, the City may establish a 45-day moratorium on the establishment prohibiting any uses that may be in conflict with a contemplated zoning proposal that the legislative body or the planning department is considering or studying or intends to study within a reasonable time. Moratoriums may be extended for up to 22 additional months provided that a current and immediate threat to the public safety, health and welfare still exists.

Councilmember Giordano suggested security cameras at facilities, no facilities around schools and parks, the use off duty police personnel, and the moratorium be extended to 180 days.

Donald (name illegible) a member of the public, referenced Proposition 215 and Senate Bill 420 allowing municipalities to open dispensaries. He urged the Council to establish medical cannabis dispensaries.

Jim Rosse, a member of the public, spoke in opposition of the moratorium. He spoke about the benefits of medical cannabis and that the laws are not well thought out. He requested the item be continued to the next meeting.

A lady (name illegible) stated there are no dispensaries in Santa Clara county because of the fears and is forced to go to other counties to procure medication and asked that the Council reconsider the moratorium. She stated most dispensaries operate with no problems.

Katheryn Manento, a member of the public, stated people do not mind paying taxes to

help new business and bring revenue into the City.

Doug (name illegible) urged the City Attorney to speak to other cities who have implemented this program and work with people who are interested in setting up dispensaries.

Chris Erlinger, a member of the public, requested that the Council consider setting up a dispensary to assist patients in not having to traveling so far to get medication.

Richard Steeb, a member of the public, stated that it is an inconvenience to get medication and advocated for a local dispensary.

A gentleman (illegible), a member of the public, stated that Kaiser Foundation favors the use of medical cannabis and so should the City.

Councilmember Polanski asked what precipitated the study if it has been possible for eight years. She stated it was another business that wants to provide a service and noted the inconvenience of securing medication. She stated she is not in favor of voting for a moratorium.

Vice Mayor Gomez inquired how many votes it would take for the ordinance to pass and how long other cities have imposed moratoriums.

Mayor Esteves expressed concerns about the potential impacts to the City and residents and opined it posed a risk. He stated he needed more information and time to review the ordinance and only wanted a slight exposure to residents.

MOTION: Waive reading beyond the title.

M/S: Gomez/Giordano

Ayes: 4 Livengood Absent.

MOTION: Adopt Ordinance No. 270 (pursuant to the provisions of Government Code 65858, the Ordinance shall be adopted and become effective immediately without a second reading if it receives a vote of at least four-fifths vote of the Council)

M/S: Gomez/Giordano

Noes: Polanski Livengood absent

MOTION FAILED

Councilmember Polanski stated there are a number of ways to meet the objective without putting in a moratorium. She stated she believes that medical cannabis should be dispensed by physicians and hoped that staff would continue to investigate.

At this juncture, Mayor Esteves called a recess at 9:45 p.m. and reconvened at 9:55 p.m.

UNFINISHED BUSINESS

3. Ethics Panel Final Report

Tambri Heyden, Planning and Neighborhood Services Director, presented the staff report. She stated the final deliverable under the Ethics Project contact is the preparation of a final report that summarizes the first year of the project and assess its success and make recommendations for improvements. She stated the report is included in the Council's agenda materials and has been reviewed by the Ethics Steering Committee and Community Advisory Commission. She introduced Dr. Shanks to make a presentation. Dr. Shanks presented the Final Report which included program goals, code development, implementation goals, 2004 activities, accomplishments, and recommendations 1, 2, 4, 5, 7, and the rationale for the recommendations. He further presented implementation goals, and estimated costs. He suggested a partners program for the next election.

Vice Mayor Gomez expressed concern about the Ethics Panel meeting again to work on an annual report after the Council voted to disband the panel. He further inquired about the costs in terms of staff time, City Attorney, and members of the Steering Committee.

Councilmember Polanski stated this report was approved before the New Open Government Ordinance was passed and that the CAC has not had the opportunity to review the changes. She stated she would like to read the Ethics Panel Final Report and noted it was part of the contract. She stated she felt the panel did a good job and did not receive the respect of the Council.

Mayor Esteves stated he would like to see the report as well and expressed his respect for the panel.

Councilmember Giordano inquired what the cost is for the Annual Report from the Ethics Panel and why the panel proceeded with this report.

Councilmember Polanski stated there is a lot of activities the Council should continue on with and that the report is the foundation for the future. She suggested the CAC spearhead the project and work it into their activity plan.

Mayor Esteves questioned the use of a consultant for the next two years.

Councilmember Giordano stated the report was very concise and complete and felt the Council should extend their time with reasoning and that the Commissions attend a workshop. She expressed concern about the fiscal impact.

Vice Mayor Gomez stated he was not in support of funding any more activities and not in favor of giving this to the CAC but was willing to give it to the Open Government Commission.

Mayor Esteves spoke in support of the Ethics Program and the recommendations except the lobbyist section that could be given to the Open Government Commission, and opined the costs were modest compared to the value they would receive.

MOTION: Support the recommendations in the report except number 4 on the lobbyist section and remove item 3 and 6.

M/S: Esteves/Polanski

Noes: Gomez, Giordano Livengood absent.

MOTION FAILED

MOTION: Approve recommendations 1 and 2 and this program be further reviewed by the Open Government Commission.

M/S: Gomez/Giordano

Noes: Esteves, Polanski Livengood absent

MOTION FAILED

MOTION: Note receipt and file.

M/S: Polanski/Esteves

Ayes: 4 Livengood absent

ADJOURNMENT

There being no further business, Mayor Esteves adjourned the City Council meeting at 10:43 p.m.

Respectfully submitted,
Donna Biles, Deputy City Clerk

The foregoing minutes were approved by the City Council with amendments on June 7, 2005.

Donna Biles

Date